

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

PATRICIA SWITZER

PLAINTIFF

VS.

LOREN TIMOTHY BEACH and  
BEACH TRANSPORT, INC.  
DEFENDANTS

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CIVIL ACTION NO.

**DEFENDANT'S NOTICE OF  
REMOVAL**

**NOTICE OF REMOVAL**

Defendants, LOREN TIMOTHY BEACH and BEACH TRANSPORT, INC., file this Notice of Removal pursuant to 28 USC § 1446(a) and Local Rule CV-81 of the United States District Court-Eastern District of Texas.

**I.**

**LOCAL RULE CV-81**

1. The style of the case exactly as it was styled in state court is: Cause No. A-201134; *Patricia Switzer v. Loren Timothy Beach and Beach Transport, Inc.*; In the District Court of Jefferson County, Texas, 58<sup>th</sup> Judicial District.

2. Defendants request a jury trial. A separate Jury Demand pursuant to Local Rule CV-38 will be filed concurrently with this Notice of Removal.

3. All parties in the case, party type and current status are:

- a) Patricia Switzer, *Plaintiff*, pending
- b) Loren Timothy Beach, *Defendant*, pending
- c) Beach Transport, Inc., *Defendant*, pending

4. A Civil Cover Sheet is being filed concurrently with this Notice of Removal. Copies of all pleadings, process, orders, and other filings in the state court suit are attached to this notice as required by 28 U.S.C. § 1446 (a). See **Exhibit A**.

5. A complete list of attorneys involved in the action being removed are:

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*Attorney for Defendants, Loren Timothy Beach and Beach Transport, Inc.*

6. Plaintiff's First Amended Original Petition does not include a request for a jury trial. Defendants hereby request a trial jury.

7. The action being removed is pending in the District Court of Jefferson County, Texas, 58th Judicial District, Jefferson County Courthouse, 1149 Pearl Street, Beaumont, Texas 77701, Hon. W. Kent Walston, Presiding.

## II.

### **INTRODUCTION AND PROCEDURAL HISTORY**

8. Plaintiff in the above styled cause of action is PATRICIA SWITZER.

9. LOREN TIMOTHY BEACH (hereinafter "Beach") is a named defendant in this litigation.

10. BEACH TRANSPORT, INC. (hereinafter "Beach Transport") is a named defendant in this litigation.

11. This personal injury suit arises out of an automobile accident that occurred on January 18, 2016 wherein Plaintiff alleges that the vehicle that she was a passenger in was struck by 18-wheeler truck being operated by Beach and owned by Beach Transport. As a result, Plaintiff has sued the Defendants for negligence. Plaintiff has alleged serious and permanent injuries and seeks monetary relief over \$200,000 but not more than \$1,000,000.

12. Plaintiff filed her Original Petition on January 4, 2018 and subsequently filed her First Amended Original Petition on January 12, 2018. Beach first received notice of this suit via service of process on January 18, 2018. Beach Transport was subsequently served on or about January 23, 2018. Defendants filed their Original Answer in State Court on February 9, 2018 and filed a Notice of Removal in the State Court Action on February 9, 2018. Thus, Defendants file this Notice of Removal within the thirty (30) days required under 28 U.S.C. § 1446(b).

### III.

#### **BASIS FOR REMOVAL**

13. Removal of this matter to federal court is proper under 28 U.S.C. § 1332 because there exists complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1332; see also *Exxon*

*Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553–54, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005).

**A. There is complete diversity of citizenship between the Plaintiff and Defendants.**

14. Complete diversity of citizenship exists when all defendants are citizens of states different from all of the plaintiffs. See *Exxon Mobil Corp.*, 545 U.S. at 553. Corporate entities are citizens of the state in which they are incorporated and the state in which their principal places of business are located. See *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 920 (5th. Cir. 2001). Individuals are citizens of the state in which they are domiciled. See *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011). Residency in a state is prima facie evidence that an individual is domiciled there. See *id.* Here, upon information and belief, Plaintiff resides and is domiciled in the state of Texas; and is thus a citizen of that state. In contrast, Defendants are citizens of Minnesota.

15. In her First Amended Original Petition, Plaintiff acknowledges that Beach is a “resident citizen” of Minnesota and Beach Transport is a foreign corporation. See Certified Copy of State Court’s Record, Plaintiff’s First Amended Petition Original Petition, pp. 1-2, attached hereto as **Exhibit A**. Beach Transport’s principal place of business is in North Branch, Minnesota. See Affidavit of Loren Timothy Beach, attached hereto as **Exhibit B**. Beach resides and is domiciled in Minnesota with no intent to move his permanent home outside the state of Minnesota. *Id.* Accordingly, neither Beach nor Beach Transport are citizens of Texas. They are in fact a citizen of Minnesota.

16. Because Defendants are citizens of Minnesota, and not Texas, there is complete diversity of citizenship between the Plaintiff and Defendants in this suit. See U.S.C. § 1332.

**B. *The amount in controversy exceeds the jurisdictional minimum for this Court's diversity jurisdiction.***

17. Removal is proper under this Court's diversity jurisdiction because the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1332.

18. Plaintiff's First Amended Original Petition seeks monetary relief over \$200,000 but not to exceed \$1,000,000. Plaintiff claims she has suffered serious and permanent injuries as the result of the incident made the basis of this lawsuit.

19. Accordingly, based on Plaintiff's own assertions and the damages sought, the amount in controversy at issue exceeds the \$75,000 jurisdictional minimum necessary to invoke the Court's original diversity jurisdiction. See 28 U.S.C. § 1332.

20. Copies of all pleadings, process, orders, and other filings in the state court suit are attached to this notice as required by 28 U.S.C. § 1446 (a). See **Exhibit A**.

21. Venue is proper in this district and division under 28 U.S.C. § 1441 (a) because the state court where the suit had been pending is located in this district.

22. Defendants will promptly file with the Jefferson District Clerk a copy of this Notice of Removal.

**IV.**

**CONCLUSION**

23. Removal of Plaintiff's suit is proper because the Defendants are citizens of Minnesota with its principal place of business in North Branch, Minnesota and the Plaintiff is a citizen of Texas. Thus, there is complete diversity of citizenship between Defendants and Plaintiff and the amount in controversy exceeds \$75,000.

Respectfully submitted,

By: /s/ David W. Medack

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument to which this Certificate is attached was duly been served upon each party by facsimile, U.S. First Class Mail and/or using the ECF System for filing and transmittal of a Notice of Electronic Filing pursuant to the Federal Rules of Civil Procedure on this 9<sup>th</sup> day of February 2018.

**Via Facsimile: (713) 333-1101**

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*Attorney for Plaintiff, Patricia Switzer*

/s/ David W. Medack

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